

Rule 377. Procedure on a Motion to Correct Clerical Mistakes, Motion for Review, or Combined Motion**Rule 377.01 Other Motions Precluded**

Except for motions to correct clerical mistakes, motions for review, or motions alleging fraud, all other motions for post-decision relief are precluded, including those under Minn. R. Civ. P. 59 and 60 and Minnesota Statutes 2000, section 518.145.

Rule 377.02 Timing of Motion

To bring a motion to correct clerical mistakes, the aggrieved party shall perform items (a) through (e) as soon as practicable after discovery of the error. To bring a motion for review or a combined motion, the aggrieved party shall perform items (a) through (f) within 20 days of the date the court administrator served that party with the notice form as required by Rule 365.04.

(a) Complete the motion to correct clerical mistakes form, motion for review form, or combined motion form.

(b) Serve the completed motion for clerical mistakes form, motion for review form, or combined motion form upon all other parties and the county agency. Service may be made by personal service or by U.S. mail pursuant to Rule 355.02. If the moving party has agreed to or is required to accept electronic service under Rule 14, service must be made by electronic means upon any other parties that have agreed to or are required to accept electronic service under Rule 14.

(c) File the original motion with the court. If the filing is accomplished by mail, the motion shall be postmarked on or before the due date set forth in the notice of filing.

(d) File the affidavit of service with the court. The affidavit of service shall be filed at the time the original motion is filed.

(e) Order a transcript of the hearing under Rule 366, if the party desires to submit a transcript.

(f) For a motion for review or combined motion, pay to the court administrator the filing fee required by Rule 356.01, if the party has not already done so. The court administrator may reject the motion documents if the appropriate fee does not accompany the documents at the time of filing.

(Amended effective July 1, 2015.)

Rule 377.03 Content of Motion

Subdivision 1. Motion to Correct Clerical Mistakes. A motion to correct clerical mistakes shall:

- (a) identify by page and paragraph the clerical mistake(s) and state the correct language;
- (b) include the acknowledgment as required pursuant to Rule 379.04; and
- (c) be signed by the party or that party's attorney.

Subd. 2. Motion for Review or Combined Motion. A motion for review or combined motion shall:

- (a) state the reason(s) the review is requested;
- (b) state the specific change(s) requested;
- (c) specify the evidence or law that supports the requested change(s);

(d) state whether the party is requesting that the review be by the child support magistrate that issued the order being reviewed or by a district court judge;

(e) state whether the party is requesting an order authorizing the party to submit new evidence;

(f) state whether the party requests an order granting a new hearing;

(g) include the acknowledgement as required pursuant to Rule 379.04; and

(h) be signed by the initiating party or that party's attorney.

Rule 377.04 Response to Motion

Subdivision 1. Timing of Response to Motion. A responding party may respond to a motion to correct clerical mistakes or a motion for review. Any response shall state why the relief requested in the motion should or should not be granted. If a responding party wishes to raise other issues, the responding party must set forth those issues as a counter motion in the response. To respond to a motion to correct clerical mistakes the party shall perform items (a) through (e) within ten (10) days of the date the party was served with the motion. To respond to a motion for review or a combined motion the party shall perform (a) through (f) within thirty (30) days of the date the party was served with the notice under Rule 365.04. To respond to a counter motion, the party shall perform items (a) through (f) within forty (40) days of the date the party was served with the notice under Rule 365.04.

(a) Complete the response to motion to correct clerical mistakes form, response to motion for review form, or response to combined motion form.

(b) Serve the completed response to motion for clerical mistakes form, response to motion for review form, or response to combined motion form upon all other parties and the county agency. Service may be made by personal service or by U.S. mail pursuant to Rule 355.02.

(c) File the original response to motion with the court. If the filing is accomplished by mail, the response to motion shall be postmarked on or before the due date set forth in the notice of filing.

(d) File the affidavit of service with the court. The affidavit of service shall be filed at the time the original response to motion is filed.

(e) Order a transcript of the hearing under Rule 366, if the party desires to submit a transcript.

(f) For a responsive motion for review or combined motion, pay to the court administrator the filing fee required by Rule 356.01, if the party has not already done so. The court administrator may reject the responsive documents if the appropriate fee does not accompany the documents at the time of filing.

Subd. 2. Content of Response to Motion

(a) Content of Response to Motion to Correct Clerical Mistakes. A response to a motion to correct clerical mistakes shall:

(1) identify by page and paragraph the clerical mistake(s) alleged by the moving party and state whether responding party agrees or opposes the corrections;

(2) include an acknowledgment as required pursuant to Rule 379.04; and

(3) be signed by the responding party or that party's attorney.

(b) Content of Response to Motion for Review, Combined Motion, or Counter Motion. A response to a motion for review, combined motion, or counter motion shall:

- (1) state why the relief requested should or should not be granted;
- (2) if new issues are raised, state the specific change(s) requested;
- (3) if new issues are raised, specify the evidence or law that supports the requested change(s);
- (4) state whether the party is requesting that the review be by the child support magistrate who issued the order being reviewed or by a district court judge;
- (5) state whether the party is requesting an order authorizing the party to submit new evidence;
- (6) state whether the party requests an order granting a new hearing;
- (7) include an acknowledgement as required pursuant to Rule 379.04; and
- (8) be signed by the responding party or that party's attorney.

(Amended effective November 1, 2003; amended effective July 1, 2015.)

Rule 377.05 Calculation of Time

Subdivision 1. Timing for Response to Motion to Correct Clerical Mistakes. To calculate the time to respond to a motion to correct clerical mistakes, three (3) days shall be added to the ten (10) days for a total of thirteen (13) days within which to respond when the motion is served by mail.

Subd. 2. Timing for Service of Motion for Review or Combined Motion. To calculate the time to serve a motion for review or combined motion, three (3) days shall be added to the twenty (20) days for a total of twenty-three (23) days within which to serve a motion when the notice form as required by Rule 365.04 is served by mail.

Subd. 3. Timing for Response to Motion for Review or Combined Motion. To calculate the time to serve a response to a motion for review or combined motion, three (3) days shall be added to the thirty (30) days for a total of thirty-three (33) days within which to respond when the notice form as required under Rule 365.04 is served by mail. If the motion for review or combined motion is served by mail, an additional three (3) days shall be added to the thirty-three (33) days for a total of thirty-six (36) days within which to respond.

Subd. 4. Timing for Response to Counter Motion. To calculate the time to serve a response to a counter motion, three (3) days shall be added to the forty (40) days for a total of forty-three (43) days within which to respond when the notice form as required under Rule 365.04 is served by mail. If the counter motion to the motion for review or combined motion is served by mail, an additional three (3) days shall be added to the forty-three (43) days for a total of forty-six (46) days within which to respond.

Rule 377.06 Review When Multiple Motions Filed - Motion for Review

If in a motion for review a party requests review by the child support magistrate and any other party requests review by a district court judge, all motions shall be assigned to a district court judge who shall either decide all issues or remand one or more issues to the child support magistrate with instructions.

Rule 377.07 Notice of Assignment of District Court Judge - Motion for Review

If a party requests that a motion for review be decided by a district court judge, upon the filing of a motion containing such a request the court administrator shall as soon as practicable notify the parties of the name of the judge to whom the motion has been assigned.

Rule 377.08 Decision and Order Not Stayed

The decision and order of the child support magistrate or district court judge remains in full force and effect and is not stayed pending a motion to correct clerical mistakes, a motion for review, or a combined motion.

Rule 377.09 Basis of Decision and Order

Subdivision 1. Timing. Within thirty (30) days of the close of the record, the child support magistrate or district court judge shall file with the court an order deciding the motion. In the event a notice to remove is granted pursuant to Rule 368, the thirty (30) days begins on the date the substitute child support magistrate or district court judge is assigned. The record shall be deemed closed upon occurrence of one of the following, whichever occurs later:

- (a) filing of a response pursuant to Rule 377.04;
- (b) filing of a transcript pursuant to Rule 366;
- (c) withdrawal or cancellation of a request for transcript pursuant to Rule 366; or
- (d) submission of new evidence under subdivision 4.

If none of the above events occur, the record on a motion for review or combined motion shall be deemed closed forty-six (46) days after service of the notice of filing as required by Rule 365.04, despite the requirements of Rule 354.04. For a motion to correct clerical mistakes and none of the above events occur, the record shall be deemed closed 15 days after service of the motion to correct clerical mistakes.

Subd. 2. Decision.

(a) Motion to Correct Clerical Mistakes. The child support magistrate or district court judge may issue an order denying the motion to correct clerical mistakes or may issue an order making such corrections as deemed appropriate. If the motion is denied, the child support magistrate or district court judge shall specifically state in the order that the findings, decision, and order are affirmed.

(b) Motion for Review. The child support magistrate or district court judge shall make an independent review of any findings or other provisions of the underlying decision and order for which specific changes are requested in the motion. The child support magistrate or district court judge may affirm the order without making additional findings. If the court determines that the findings and order are not supported by the record or the decision is contrary to law, the child support magistrate or district court judge may issue an order:

- (1) denying in whole or in part the motion for review;
- (2) approving, modifying, or vacating in whole or in part, the decision and order of the child support magistrate; or
- (3) scheduling the matter for hearing and directing the court administrator to serve notice of the date, time, and location of the hearing upon the parties.

In addition, the district court judge may remand one or more issues back to the child support magistrate with instructions. If the child support magistrate who issued the order is unavailable, the motion may be assigned by the court administrator to another child support magistrate serving in the judicial district. If any findings or other provisions of the child support magistrate's or district court judge's decision and order are approved without change, the child support magistrate or district court judge shall specifically state in the order that those findings and other provisions are affirmed but need not make specific findings or conclusions as to each point raised in the motion. If any findings or other provisions of the child support magistrate's or district court judge's decision and order are modified, the child support magistrate or district court judge need only make specific findings or conclusions with respect to the provisions that are modified.

Subd. 3. Record on Review. The review by the child support magistrate or district court judge shall be based upon the decision of the child support magistrate or district court judge and any exhibits and affidavits filed, and, where a transcript has not been filed, may be based upon all or part of the audio or video recording of the hearing.

Subd. 4. Additional Evidence Discretionary. When bringing or responding to a motion to correct clerical mistakes, a motion for review, or a combined motion, the parties shall not submit any new evidence unless the child support magistrate or district court judge, upon written or oral notice to all parties, requests additional evidence.

Subd. 5. No Right to Hearing. A hearing shall not be held unless ordered by the child support magistrate or district court judge. The child support magistrate or district court judge may order a hearing upon motion of a party or on the court's own initiative. A party's motion shall be granted only upon a showing of good cause. In the event the child support magistrate or district court judge decides to conduct a hearing, the child support magistrate or the district court judge shall direct the court administrator to schedule a hearing date and to serve notice of the date, time, and location of the hearing upon all parties and the county agency.

Subd. 6. Costs and Fees. The child support magistrate or district court judge may award costs and fees incurred in responding to a motion to correct clerical mistakes, motion for review, or combined motion if the child support magistrate or district court judge determines that the motion is not made in good faith or is brought for purposes of delay or harassment.

(Amended effective June 1, 2009.)

Advisory Committee Comment - 2008 Amendment

Rule 377.09, subdivision 2(b), is amended to correct language of the existing Rule that could be interpreted to have a mandatory meaning not intended by the Drafters. The revised rule allows the child support magistrate to affirm an order without findings, but does not require that. The rule is intended to adopt expressly a de novo standard of review. The reviewing court need not make findings if the decision is to affirm. De novo review is consistent with the reported decisions construing the former rule. See, e.g. Kilpatrick v. Kilpatrick, 673 N.W.2d 528, 530 n.2 (Minn. Ct. App. 2004); Davis v. Davis, 631 N.W.2d 822, 825 (Minn. Ct. App. 2001); Blonigen v. Blonigen, 621 N.W.2d 276, 280 (Minn. Ct. App. 2001), review denied (Minn. Mar. 13, 2001).

Rule 377.10 Notice of Order or Judgment

Within five (5) days of receipt of an order issued as a result of a motion to correct clerical mistakes, a motion for review, or a combined motion, the court administrator shall serve a notice of filing of order or notice of entry of judgment upon each party by U.S. mail, along with a copy of the order or judgment. The notice shall state that the parties have a right to appeal to the Court

of Appeals under Rule 378. If the order was issued by a district court judge, the court administrator shall provide a copy of the order to the child support magistrate.

Rule 377.11 Effective Date; Final Order

The order issued following a motion to correct clerical mistakes, a motion for review, or a combined motion is effective and final when signed by the child support magistrate or district court judge.